

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SOUTHERN BAKERIES, LLC

and

BAKERY, CONFECTIONARY, TOBACCO  
WORKERS, AND GRAIN MILLERS UNION

Case 15-CA-174022

**SOUTHERN BAKERIES, LLC'S RESPONSE  
TO NOTICE TO SHOW CAUSE**

Respondent, Southern Bakeries, LLC (the “Company”), by counsel, hereby responds to the “Notice to Show Cause” issued by the Board. In the Notice, the Board requested that the parties submit responses as to “why this case should not be remanded to the administrative law judge,” in light of the Board’s decision *The Boeing Company*, 365 NLRB No. 154 (2017), which overruled the analytical framework set forth in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004).

This case should, in fact, be remanded to address the two work rules that the Administrative Law Judge determined to be unlawful, namely a work rule against the use of audio equipment and a rule against using company time and resources for personal use unrelated to employment with the company. (ALJ Decision at 11-12.) In finding that those work rules were unlawful, the ALJ relied on the “reasonably construe” standard from *Lutheran Heritage*. (*Id.* at 10.) Remanding the case will properly require the ALJ to reexamine his analysis using the balancing test set forth in the *Boeing* decision.

However, in remanding the case, the Board should limit the ALJ's review to the two work rules he deemed unlawful. The ALJ correctly determined that five other work rules challenged by General Counsel were not unlawful. (ALJ Decision at 10-11 & n.11.) It is unnecessary for the ALJ to reexamine those five work rules already deemed lawful, as the ALJ correctly determined that General Counsel failed to advance a "specific reason . . . for why a reasonable employee would construe the language [in those rules] to inhibit Section 7 rights." (*Id.* at 10-11.) The correctness of that determination would only be confirmed through a resort to the *Boeing* analysis.

Accordingly, Respondent, Southern Bakeries, LLC, respectfully requests that the Board remand the case to allow the ALJ to reexamine his analysis in the light of the *Boeing* decision of the two work rules that he initially deemed unlawful, but that such review be limited to only those two work rules.

Respectfully submitted,

/s/ David L. Swider

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*Attorneys for Respondent,  
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### CERTIFICATE OF SERVICE

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Cheryl Muldrew 704 North Hazel Street Hope, AR 71801-2816	Lorraine Marks Briggs 405 Red Oak Street Lewisville, AR 71845-7834
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